

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CENTRAL SECTION

CIVIL ACTION NO. 04-40027-FDS

| | |
|------------------------------------|---|
| DAVINCI BIOMEDICAL RESEARCH |) |
| PRODUCTS, INC. |) |
| Plaintiff, |) |
| |) |
| vs. |) |
| |) |
| TOSHIBA AMERICA MEDICAL |) |
| SYSTEMS, INC. |) |
| Defendant, |) |

**JOINT STATEMENT PURSUANT TO FED. R. CIV. P. RULE 26(f)
AND LOCAL RULE 16.1**

Now come the parties and pursuant to Fed. R. Civ. P. Rule 26(f), Local Rule 16.1 and this Court's Order, submit this joint statement and proposed pretrial schedule.

I. AGENDA FOR SCHEDULING CONFERENCE:

The parties propose that the agenda for the initial scheduling conference include the following:

1. The parties' proposed discovery plan;
2. Settlement and ADR;
3. Consideration of trial by a Magistrate Judge.

As required by Fed. R. Civ. P. Rule 26(f) and Local Rule 16.1(B), Counsel for both parties conferred prior to the conference and agreed upon the proposed agenda and discovery

schedule.

II. DISCOVERY PLAN:

A. Initial Disclosure:

In accordance with Local Rule 26.2(A) and this Court's Order, Plaintiff has completed its Initial Disclosure. The Defendant shall complete its Initial Disclosure as required under Fed.R.Civ.P. Rule 26(a)(1) by October 1, 2004.

B. Written Discovery Requests:

The parties propose that written discovery requests to a party may be served, within the confines of Local Rule 26.1(c), at any time after initial disclosure has been served. All written discovery requests, including requests to admit under Fed. R. Civ. P. Rule 36, must be served no later than January 31, 2005.

C. Depositions:

The parties propose that the notice and taking of depositions of fact witnesses be completed on or before March 30, 2005.

D. Expert Disclosures and Discovery:

The parties propose that Plaintiff's experts be designated by March 30, 2005 with disclosure of expert reports by April 30, 2005. Defendant's rebuttal experts shall be designated with disclosure of reports by May 31, 2005. Expert depositions may be taken pursuant to Fed. R. Civ. P. Rule 26(b)(4) no later than June 30, 2005.

III. FILING OF MOTIONS:

The parties propose that all motions for summary judgement be filed no later than August 31, 2005.

IV. PROPOSED FINAL PRE-TRIAL CONFERENCE:

The parties propose that the Court schedule a final Pretrial Conference within 45 days of receipt of a decision of any pending summary judgment motions, if such motions are filed. Otherwise, the parties propose that the final Pretrial Conference be scheduled as soon as practicable after the close of discovery.

V. TRIAL BY A MAGISTRATE JUDGE:

The Plaintiff consents to trial by a magistrate judge. The Defendant does not consent at this time. However, the parties may revisit this issue in the immediate future.

VI. COMPLIANCE WITH LOCAL RULE 16.1(D):

By signing below, counsel for each of the parties certifies that he has conferred with his client relative to a budget for the costs of litigating this matter (both full course litigation and various alternatives) and has also discussed the possibility of alternative dispute resolution. The undersigned counsel will file Rule 16.1(D)(3) certifications separately.

Respectfully Submitted,

DaVinci Biomedical Research Products, Inc.
By Its Attorney,

s/Robert White

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Toshiba America Medical Systems, Inc.
By Its Attorney,

s/Kenneth C. Pickering

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LOCAL RULE 16.1 CERTIFICATION

The undersigned certify that, pursuant to Local Rule 16.1(D)(3), the authorized representative of DaVinci Biomedical Research Products, Inc. conferred with counsel with a view to establishing a budget for the costs of conducting the full course and alternative courses of this litigation, and have considered the resolution of the litigation through the use of Alternative Dispute Resolution programs such as those outlined in Local Rule 16.4.

By:

Joseph Villani, President
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By:

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Dated: August ____, 2004